IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.
WRIT PETITION NO.4488 OF 2005

M/s Chemfert Traders, a company.. .. Petitioners (Orig.Plaintiffs)

Vs

1. Shri Vilash Anandrao Khalate and ors. .. Respondents. (Orig.Defendants)

Mr D.S.Joshi i/b R.A.Shaikh, for the petitioners.
Mr A.P.Kulkarni, for respondent no.1.

CORAM : D.B.BHOSALE,J.
DATE : 30.08.2006
PC:

1. Heard the learned counsel for the parties.

2. Rule. Returnable forthwith. Mr Kulkarni, learned counsel, waives service for respondent no.1. By consent, rule is heard forthwith.

3. By this writ petition under Article 227 of the Constitution of India, the petitioners have impugned two orders dated 9.3.2005 and 7.4.2005 passed on the applications at Exhibits 81 and 85 respectively, by which both the applications have been rejected. The application at Exhibit-81 was filed by the petitioners under Order XIII Rule 1 of the Code of Civil Procedure seeking permission to produce the document, i.e. Statement of accounts showing monthly summary of the accounts from 1.4.1997 to 24.12.1997, with the writing thereon purportedly made by respondent no.1. Whereas the application at Exhibit-85 was filed under Order

XVIII, rule 17 of the C.P.C seeking permission to recall the witness to enable them to produce the aforestated document. The first application at Exhibit-81 has been rejected by the learned Judge on the ground that no good cause was shown by the petitioners for the production of the said document. Mr.Kulkarni, learned counsel for respondent no.1, raised the objection for production of the said document on two grounds. Firstly, that the document is not admissible in evidence since it is not stamped, and secondly, on the ground that the document was within the knowledge of the petitioners while their witness was in the witness box and that he ought to have produced the said document at that stage. Merely because the document is allowed to be produced on record does not mean that it stands admitted in evidence. Its admissibility can still be objected to and in that case the court will have to decide it at appropriate stage of the trial. After having considered the submissions of the learned counsel for the parties and perusal of the impugned orders and considering the overall facts and circumstances of the case, I am satisfied that the following order shall meet the ends of justice.

(i) The orders impugned in the present writ petition are set aside.

(ii) The trial court shall allow the plaintiffs to

step into witness box for the limited purpose of allowing them to produce the aforestated document. The plaintiffs shall not be allowed to state anything more than what would be necessary for the purposes of production and to prove the said document.

(iii) The respondents shall have a liberty to raise objections for the production of the said document on whatever grounds they so desire. The court shall record the objections raised by the defendants. If the objection is to its admissibility in evidence on the ground that it is not stamped, though required in law, such objection shall be decided by the court before proceeding further with the case. Insofar as other objections, if any, same may be considered and decided at the stage of final judgment. It is open for the respondents to rely upon the judgment placed before me in Manilal Motiram Mehta Vs Natwarlal Gokaldas Shah and ors, AIR (34) 1947 Bombay 337 before the trial Court. The trial Court shall complete this exercise within four weeks from the date of receipt of this order. If the petitioners-plaintiffs fail to comply with this order within the aforesaid time the trial court shall proceed with the case without granting them further time. Rule is accordingly disposed of.

(D.B.BHOSALE,J.)